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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/634,381	08/09/2000	Roy L. Hood	40333.0113	5176

7590

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EXAMINER

PIERCE, JEREMY R

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 11/07/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/634,381

Applicant(s)

HOOD ET AL.

Examiner

Jeremy R. Pierce

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 16-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 19 September 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. Amendment A has been entered as Paper No. 5 on September 19, 2002. Claim 1 has been amended. The amendment is sufficient to overcome the 35 USC 112 rejection set forth in section 9 of the last Office Action.

### ***Election/Restrictions***

2. Applicant's election of claims 1-15 in Paper No. 5 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Applicant's arguments to the restriction have no substance. For instance, Applicant says, "The traditional apparatus cannot be used to produce the claimed product where at least some terminal parts of the projecting elements are formed from a second polymer." But Applicant gives no reason why this is so. Merely stating the converse of what the Examiner has established is not a sufficient argument against why restriction is inappropriate. Applicant makes a similar statement with regard to the claimed product cannot be made by a different process, failing to give a reason why it cannot. Applicant then asserts that different classifications are insufficient grounds to base a restriction requirement. However, the restriction requirement is proper as set forth in the last Office Action.

***Drawings***

3. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on September 19, 2002 have been entered along with Paper No. 5. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1, 2, 5-8, 10, 12, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Doleman et al. (U.S. Patent No. 3,507,010) as set forth in Section 11 of the last Office Action.

6. Claims 1, 2, 5-8, 12, 13, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Rawlinson (U.S. Patent No. 4,329,196) as set forth in Section 12 of the last Office Action.

7. Claims 1, 2, 5-10, 12, 14, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Schepp et al. (U.S. Patent No. 4,004,376) as set forth in Section 13 of the last Office Action.

8. Claims 1, 2, 5-10, 12, 13, and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Holtrop et al. (U.S. Patent No. 6,357,388) as set forth in Section 14 of the last Office Action.

***Claim Rejections - 35 USC § 103***

9. Claims 3, 4, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Doleman et al., Rawlinson, Schepp et al. or Holtrop et al. as set forth in Section 16 of the last Office Action.

***Response to Arguments***

10. Applicant's arguments filed in Paper No. 5 have been fully considered but they are not persuasive.

11. Applicant disagrees with Examiner's assertion that there is no suggestion in the claims that the two polymers have to be different in any manner, arguing that claim 1 clearly teaches the use of second polymer. However, there is nothing in claim 1 that says the second polymer has to be different, in any way, to the first polymer. Applicant asserts that claim 8 lends support to the position that more than one polymer is contemplated for use in the invention. However, this argument is erroneous. Claim 8 recites, "at least one of said polymers is polyethylene". If "at least one" polymer is polyethylene, then more than one (i.e. both) of the polymers can be polyethylene. Claim 8 lends support to the argument that the polymers can be the same; as much as it lends support that the polymers can be different.

12. Applicant argues claim 2 requires first and second colored pigment. But like the first and second polymer limitation, there is no recitation that indicates first and second colored pigments need to be different from one another.

Art Unit: 1771

13. Applicant argues claim 15 requires the use of a polymer for at least some of the terminal parts of the projecting elements is distinct from polymer that is used in the remainder of the projecting element. However, claim 15 only recites, "at least some terminal parts of said projecting elements are formed from at least one distinct polymer." Nothing is recited that the polymer is distinct from the remainder of the projecting element. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the polymer in some of the terminal parts being distinct from polymer used in the remainder of the projecting element) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

14. Applicant argues that Rawlinson does not teach a unitary article because it teaches a substrate and three-dimensional layer of a single polymer bonded to one another. However, the Examiner does not see any limitation in the claim that the substrate and the three-dimensional layer need to be continuously manufactured from the same polymer. And the Examiner does not recognize the term "unitary" to mean this limitation either. Unitary means of or relating to a unit. A laminated article formed from two separate layers can be considered unitary because it still forms a unit.

15. The arguments pertaining to the first and second polymers and first and second colored pigments are analogous to the arguments above, and Examiner's reply is the same.

Art Unit: 1771

16. Applicant argues that Schepp does not teach the claimed invention for similar reasons that Doleman do not. Again, there is nothing in the claims that states the first and second polymers need to be different from one another.

17. Applicant argues that the claimed invention is distinguished from Holtrop because it requires the use of different materials in the projections themselves. Again, Applicant has failed to actually cite this limitation in the claims.

18. Applicant argues the obviousness of differentially dyeing parts of the substrates with different colors because the relevance of the dyeing of the substrate as the claimed article has the different colors molded into the projecting elements during production of the article. However, this argument is based upon a method of making an article, and not the article itself. Also, the fact still remains that Applicant has failed to set forth that the two polymers need to be different.

### ***Conclusion***

19. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

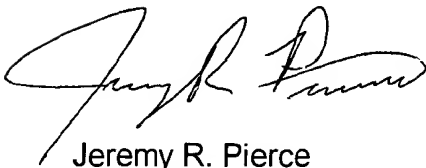
Art Unit: 1771

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy R. Pierce whose telephone number is (703) 605-4243. The examiner can normally be reached on Monday-Thursday 7-4:30 and alternate Fridays 7-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Jeremy R. Pierce  
Examiner  
Art Unit 1771



ELIZABETH M. COLE  
PRIMARY EXAMINER

November 6, 2002